

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION

OCT 13 2011

JULIA C. DUDLEY, CLERK  
BY:   
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UNITED STATES OF AMERICA, )  
 )  
 ) Criminal No. 5:05cr00029-2  
v. )  
 ) 2255 MEMORANDUM OPINION  
 )  
RANDOLPH W. AREY. )  
 ) By: Samuel G. Wilson  
 ) United States District Judge

Petitioner, Randolph W. Arey, a federal inmate proceeding *pro se*, filed a “motion to vacate conviction or, in the alternative, to vacate the sentence.” Because Arey challenges the validity of his conviction and sentence, the court construes his motion as a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.<sup>1</sup> Upon review of the record, however, the court concludes that Arey’s instant § 2255 motion must be dismissed as successive.

I.

Arey challenges his 595-month sentence for conspiring to distribute methamphetamine and two counts of possessing a firearm in furtherance of a drug trafficking crime. Court records indicate that Arey previously filed a § 2255 motion regarding the same conviction and sentence which this court denied. See Docket Nos. 177 and 178. This court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the motion meet certain criteria. See § 2255(h). As Arey has not submitted any evidence of having obtained certification from the Court of

<sup>1</sup> The characterization of a *pro se* motion is determined by its subject matter and not the caption the petitioner assigned to it. See Calderon v. Thompson, 523 U.S. 538, 554 (1998). A court may recharacterize a *pro se* motion “to create better correspondence between the substance of the . . . motion’s claim and its underlying legal basis.” Castro v. United States, 540 U.S. 375, 381 (2003).

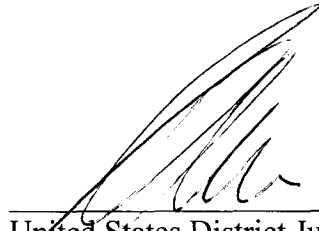
Appeals to file a second or successive §2255 motion, the court must dismiss his petition as successive.<sup>2</sup>

## II.

For the reasons stated, the court dismisses Arey's motion as a successive § 2255 motion.

The Clerk is directed to send copies of this Memorandum Opinion and the accompanying Order to the parties.

ENTER: This 13<sup>th</sup> day of October, 2011.

  
\_\_\_\_\_  
United States District Judge

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<sup>2</sup> Petitioner is hereby advised of the procedure for obtaining certification from the United States Court of Appeals for the Fourth Circuit to have this court review a successive § 2255 motion. Petitioner must submit a copy of the successive § 2255 motion to the Court of Appeals, along with a motion requesting a three-judge panel certification that the district court may review the successive § 2255 motion. See 28 U.S.C. § 2244 (as amended, 1996). A Fourth Circuit form and instructions for filing this motion will be included with this notice or are available from the Fourth Circuit at the following address: Office of the Clerk, United States Court of Appeals for the Fourth Circuit, 900 E. Main St., Richmond, VA 23219.